

REMARKS

The Office Action mailed August 27, 2003 and the subsequent Office Action mailed on March 24, 2004, following the filing of the RCE on February 26, 2004, have been carefully reviewed and considered. The courtesies extended to the Applicants and the undersigned Attorney in this regard are noted with appreciation. In response, Claims 1, 3, 6, 7, 8, 11, 12, 14, 16 and 17 have been amended and new Claims 19-24 have been added. Claims 1, 3, 6, 7, 8, 11, 12, 14, 16 and 17 having been amended and new Claims 19-24 having been added, the claims now pending in the present application are Claims 1-24.

As noted above, the claims have been amended. The amendments to the claims find support in the drawings, particularly in Figures 11-14, and the new claims similarly find support in Figures 11-14 and also in the discussion relating to these figures at page 21, lines 13-21 and page 21, line 22 to page 22, line 3.

Enclosed herewith is a Petition for a five-month Extension of Time extending the end for the period of response to the outstanding Office Action mailed March 24, 2004 from April 24, 2004 to September 24, 2004. A check for the fees which includes an amount intended to make payment for the extension fee is enclosed herewith. If any further fees are required to make the present response timely filed, please charge these fees to the deposit account of the undersigned attorney, deposit account no. 13-4300. Thank you.

Also enclosed herewith is an Information Disclosure Statement disclosing an owner's manual published by the assignee of the present invention, Agri-Cover, Inc., in 1996. Prior to the previous correspondence with the Patent Office with respect to the present application, the undersigned attorney was unaware that certain aspects of the disclosure made in the prior art now submitted of record in the present Information Disclosure Statement were of significance to a determination of patentability of the present invention. The Information Disclosure Statement is submitted to address the

undersigned attorney's recent determination that a prior tonneau cover sold by the assignee of the present application, included the end plate shown in pages 3 and 4 of the newly cited reference. This end plate is similar to the end plate 20, shown in Figures 2, 3, 7 and 10 of the present application. The prior tonneau cover was offered for sale and sold prior to the filing of the applications underlying present application and more than one year prior to the applications underlying the present application. It is now believed that this end plate has particular pertinence to the patentability of the presently claimed invention. For that reason, the cited Owner's Manual has now been submitted as prior art. The Examiner's acknowledgment of the new cited prior art is respectfully requested. The aforementioned check includes an amount for late submission of the Information Disclosure Statement insofar as such a fee is due in view of the period of time that has lapsed since this determination.

The previous correspondence to the Office was accompanied by a Request for Continued Examination (RCE) and a Request for a Three-Month Extension of Time in which to respond to the outstanding Office Action mailed August 27, 2003. As noted by the Examiner, the response was acknowledged to be timely, but errors in the response caused it to be not fully responsive. In the present response it is believed that the errors in reciting certain of the pending claims correctly have been corrected. The Examiner's indulgence in this regard is noted with appreciation. In view of the determination regarding the enclosed prior art reference, the amendments presently proposed differ from those previously proposed but not entered.

On page 2 of the Office Action mailed August 27, 2003 (the first Office Action), Claims 12 -16 are objected to due to certain informalities. It is believed that these informalities have been corrected in the current amendments. In view of these corrections, it is respectfully submitted that the Examiner's objections are now mute.

On page 2 of the first Office Action, the Examiner has rejected Claims 1-3, 7, 8, 12, 13, 17 and 18 as being anticipated under §102(b) by Thomsen et al. (U.S. Patent No. 5,860,691). The Examiner has asserted that Thomsen et al. disclose a tonneau

cover apparatus (10) comprising: a flexible cover (fabric 100); a pivoting end plate (rigid end rails 104) having a radial engaging surface (guiding edge 138); a support frame (16) having side rails (34); and a locking member (rod 118); wherein each side rail includes an end plate engagement member (latch 38); and wherein the end plate engagement members have a radial receiving surface (receiving slot 136).

The Examiner's reference to the Thomsen et al. reference is appreciated so that the present invention can be clearly distinguished over the disclosure of Thomsen et al. In this regard, it is noted that the claims have been amended to clarify the invention and to clearly distinguish it from Thomsen et al., which does not disclose a pivoting end plate but rather a rigid end rail 104 that simply slides into a seated position in which a rearward end (guiding edge 138) of the rigid end rail 104 is seated in a receiving slot (receiving slot 136). It will be appreciated, however, that when the rigid end rail 104 becomes seated it does not appear to pivot into position, nor is it disclosed to pivot into position, but rather, the guiding edge 138 inserted into position as described in column 6, lines 1-22 of the '691 patent. Furthermore, the portion of the end rail that is inserted into the previously described slot is the rearward end of the end rail as oppose to the forward end of the end rail or end plate as shown in the drawings and claimed in the present claims. Furthermore, even if the rearward end of the rigid end rail was arranged to pivot into position, which it does not, it would not stretch the flexible cover but would in fact loosen the cover as the rearward end pivots with respect to the engagement member, because it would have to pivot toward, not away from, the flexible cover. For this reason, the rigid end rail of Thomsen et al. functions in a completely different manner than the end plate of the present invention, which stretches the flexible cover as it pivots into the closed position. For this reason, the §102 rejection of the claims is respectfully traversed. Insofar as it may be maintained with respect the present claims, reconsideration and withdrawal is respectfully requested.

In further regard to the claims, it is further noted that Claim 1 does not recite a radial receiving surface as one might presume when reading the Examiners' remarks repeated hereinabove. Instead, Claim 1 recites a receiving surface and is without a

limitation to a radial receiving surface, but such a recitation is provided in dependent claim 2 reciting aspects of one embodiment of the invention.

With respect to the Examiner's remarks in the first Office Action, it is also noted that the rod member 118 disclosed by Thomsen et al. is not a locking member that retains the end plate in a closed or closed position in the manner in which the locking member of the present invention recited in Claim 12 retains the present end plate. Instead, the rod 118, is simply a member about which the flexible cover is sewn in order to secure the flexible cover to the end plate. In this regard, the Examiner's attention is drawn to a discussion of the rod 118 in the '691 patent at column 5, lines 49-54.

The further comments by the Examiner on page 3 of the first Office Action regarding the response to prior arguments and the allowable subject matter are noted with appreciation.

On page 4, the Examiner has made note of two additional patents that are listed on the PTO Form 892 accompanying the outstanding Office Action. These additional patents are U.S. Patent No. 6,568,740 to Dimmer and U.S. Patent No. 6,575,520 to Spencer. The undersigned attorney respectfully submits that these two patents **are not prior art** with respect to the present application. This is because each of these patents issued from patent applications that were filed on October 31, 2001, well after the filing date of U.S. Provisional Patent Application Serial No. 60/225,109, filed August 14, 2000, to which the present application claims priority, and well after the filing date of the present application, August 14, 2001. The Applicants respectfully reserve the right to swear back to even earlier dates of invention for the various inventions disclosed in the present application and its underlying provisional application. The undersigned attorney respectfully requests the Examiner to acknowledge for the record that the two patents listed on the PTO 892 provided with the most recent Office Action do not appear to be prior art for the present application.

In responding to the present Office Action we have made further amendments to

the claims to clarify the invention now claimed in the present claims. In doing so, we have amended each of the independent claims to recite that each of the end plate engagement members have a receiving surface that engages at least a portion of the radial engaging surface in a plurality of spaced apart locations when the end plate pivots into the closed position and the forward end of the end plate pivots with respect to the engagement member, wherein the radial engaging surface extends continuously around the end plate between the plurality of spaced apart locations. In this regard, it will be appreciated that the radial surface is a continuous radial surface of the kind shown in Figures 11-14 of the present application, wherein it will be appreciated that the end plate engagement member(s) engage the radial engaging surface in a plurality of spaced apart locations along the radial engaging surface and that the radial surface is continuous between these plurality of spaced apart locations. It is respectfully submitted that this recitation effectively distinguishes the present claims from the prior art references now of record in the present application when taken either alone or in combination with any other references. The Examiner's consideration in this regard will be appreciated. Thank you.

In view of the foregoing, it is respectfully submitted that the present application is now in condition for allowance and notification to that effect is earnestly solicited.

The Examiner is respectfully urged to contact the undersigned attorney if there are any further matters standing in the way of allowance of the above-identified application and it is believed by the Examiner that these matters can be addressed and resolved in a telephone conference and thereby speed the conclusion of the present prosecution. The Examiner's consideration in this regard will be appreciated.

Respectfully submitted,

For the Applicants,

By their Attorneys

MOORE, HANSEN & SUMNER

Customer No. 22854

225 South Sixth Street

Suite 4850

Minneapolis, MN 55402

Tel. 612-332-8200

September 24, 2004



Robert C. Freed, Registration No. 32,569